

own recognizance, or on terms other than money, bail, or collateral, and second, to make the provisions of section 5.11 consonant with a proposal or recommendation to be submitted to you by the Committee on Personal Rights and the Preamble, which would grant a right of pre-trial release, conditioned only upon such terms as are necessary to secure the appearance of the accused before the court.

I understand that Delegate Mudd was asked a question as to whether the provisions of section 5.11 and the use of the word "bail" would permit the commissioners to release people on terms other than money bail, and that it was his opinion and that of the Committee that the word would suffice. However, I am concerned that it will not do so, and in any event feel that the substituted words will suitably fit the power which is intended to be conferred.

My concern over whether the word "bail" will suffice is apparently shared by the General Assembly of Maryland because in the 1965 session it was found advisable, if not necessary, to specifically grant to the courts the authority to release defendants on their own recognizance, and, of course, these courts have had the power to fix money bail. That was accomplished in Article 27, section 638-A, passed in the 1965 session. It is my further understanding that the Legislative Council will recommend to the next session of the General Assembly legislation implementing the right of an accused to pre-trial release, so that the change suggested by this amendment would, I think, very adequately in no larger number of words cover the situation. Instead of the word "bail," we would use the words, "terms of pre-trial release," which would encompass not only the posting of money bail through a professional bondsman, but also the release of the accused on his own recognizance or under such other terms as the commissioner may find are reasonably necessary to secure his appearance before the court.

I am sure this Committee of the Whole shares with me the concern that people will be physically incarcerated in lieu of the money bail, and I understand further that there are many parts of this State in which the services of a professional bail bondsman are not readily available, even where the accused has the wherewithall to pay for cash bail.

For those reasons, I strongly suggest that the amendment be adopted and that the word "bail" be eliminated from the

powers of the commissioners, and instead that they be given the broader power to set terms of pretrial release any time reasonably calculated to secure the presence of the accused before the court, as required.

THE CHAIRMAN: Delegate Bothe, the Chair is uncertain. Are you suggesting that your amendment be modified so that it reads, strike out the words "bail, collateral."

DELEGATE BOTHE: May I read the wording as it would be if the amendments were adopted?

THE CHAIRMAN: Yes.

DELEGATE BOTHE: "Commissioners may exercise powers only with respect to warrants of arrest, terms of pretrial release, or incarceration pending hearing, and then only as prescribed by rule."

THE CHAIRMAN: Then the printed motion should be modified in line 2, to strike out, in addition the words "collateral" and "bail," which were inserted by modification of the committee recommendation.

Is there any objection to the modification of the amendment by interlineation?

The Chair hears none.

Will you please modify line 2 as follows: before the word "collateral" and after the quotation mark, insert the word "bail,".

In other words, the effect of the amendment is to strike out the words "bail, collateral and", and to substitute the language indicated in lines 4 and 5.

Delegate Mudd.

DELEGATE MUDD: Mr. Chairman, Delegate Bothe has correctly stated the intent and the purpose of the majority report in this regard, and I did indicate at some point, I believe, in answer to a question that we proposed to be implicit in the language of our recommendation that the commissioners do have the power with respect to terms of pretrial release. In fact, the word "bail" we thought carried such authority. However, I have not had the chance to check this with all members of my Committee, but it is my disposition to concur in the amendment by making the language explicit in the manner we intended, and I do so concur on behalf of the Committee, unless some member wishes to rise in opposition.

THE CHAIRMAN: Does any member of the Committee wish to speak in opposition to the amendment?